

Subject: CCNS comments on Statewide WQMP

Date: Tue, 19 Mar 2002 16:53:04 -0700

From: Joni Arends <jarends@nuclearactive.org>

To: glenn_saums@nmenv.state.nm.us

March 19, 2002

By Email to glenn_saums@nmenv.state.nm.us
And By Mail to the Address Below:

Mr. Glenn Saums
Surface Water Quality Bureau
New Mexico Environmental Department
P. O. Box 26110
Santa Fe, New Mexico 87502

Re: Comments on the Proposed Revisions to the
Statewide Water Quality Management Plan

Dear Mr. Saums:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments on the proposed revisions to the required Section 208 of the Federal Water Pollution Control Act Statewide Water Quality Management Plan (WQMP).

CCNS was founded in 1988 to provide a voice for community concerns about the transportation of nuclear waste through New Mexico. CCNS is a grassroots organization and watchdog group that believes the public must be involved in the oversight of resource and waste issues, including water. Over the years, CCNS has participated in many formal and informal public forums addressing environmental and public health issues.

CCNS attended the February 6, 2002 Santa Fe meeting and reviewed the proposed elimination of the WQMP Introduction and the Public Participation Program (Work Element No. 11).

CCNS requests that the Introduction to the New Mexico Statewide WQMP be updated and retained as part of the WQMP. The background information found in the Introduction is very useful for understanding the history, development, and progress of the WQMP.

CCNS objects to the elimination of the WQMP Public Participation Program (Work Element No. 11). It should be retained and re-numbered as Work Element No. 10 - Public Participation Program.

Under the federal regulations for developing water quality management plans, public participation procedures are one of the essential components of a state program under the groundwater element. 40 CFR §130.6(c)(9)(v). However, no public participation procedures are included in the proposed revisions for Ground water (Work Element No. 9). New Mexico is required to include public participation procedures in the Statewide WQMP. The proposed changes do not include any public participation procedures.

CCNS understands that the Public Participation Program elements have been incorporated into other water planning documents. In our limited review of the documents, we have been unable to find them.

Public participation is essential in our post 9-11 world. Since 9-11, public documents have been removed from websites and reading rooms, thus limiting the public's ability to participate in decisionmaking. Just last week, industry representatives opposed proposed expanded public notification requirements for groundwater discharges before the Water Quality Control Commission. Both of these examples support the need for the WQMP Public Participation Program. As stated in Work Element 11:

What is meant by the term "public participation"? It goes beyond public relations; it encompasses education, the dispensing of information, and more importantly providing for public involvement and feedback regarding the water quality plan.

Encouraging meaningful public participation in water quality programs is an ongoing effort and part of the state's continuing planning process.

The Public Participation Program includes advisory bodies, a mailing list, newsletters, public presentations, mini-libraries, traveling exhibits, a photography contest, children's booklets, and specific activities of the League of Women Voters - all important efforts to educating and obtaining feedback about the statewide water quality plan.

As the drought continues, water issues will be discussed at all types of forums, including government meetings. The Statewide WQMP is a key water quality planning document. Information must be available and accessible to the community so that informed policy decisionmaking happens in the "sunshine."

Eliminating the WQMP Public Participation Program would violate the water quality management plan regulations. 40 CFR §130.6(c)(9)(v). A positive step would be to retain the existing WQMP Work Element No. 11 language, and in a timely manner, form an advisory board to advise the Surface Water Quality Bureau about updating the language. CCNS volunteers to serve on the advisory board.

Thank you for your consideration of CCNS's comments. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joni Arends
Waste Programs Director



[WQMP_Comments_3=19=02.doc](#)

Name: WQMP_Comments_3=19=02.doc
Type: Microsoft Word Document (application/msword)
Encoding: base64

--

Joni Arends

Waste Programs Director
Concerned Citizens for Nuclear Safety
107 Cienega Street, Santa Fe, NM 87501
(505) 986-1973; fax (505) 986-0997
CCNS Hotline: (505) 982-5611 (local); (800) 456-8863
www.nuclearactive.org

March 19, 2002

By Email to glenn_saums@nmenv.state.nm.us
And By Mail to the Address Below:

Mr. Glenn Saums
Surface Water Quality Bureau
New Mexico Environmental Department
P. O. Box 26110
Santa Fe, New Mexico 87502

Re: Comments on the Proposed Revisions to the
Statewide Water Quality Management Plan

Dear Mr. Saums:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments on the proposed revisions to the required Section 208 of the Federal Water Pollution Control Act Statewide Water Quality Management Plan (WQMP).

CCNS was founded in 1988 to provide a voice for community concerns about the transportation of nuclear waste through New Mexico. CCNS is a grassroots organization and watchdog group that believes the public must be involved in the oversight of resource and waste issues, including water. Over the years, CCNS has participated in many formal and informal public forums addressing environmental and public health issues.

CCNS attended the February 6, 2002 Santa Fe meeting and reviewed the proposed elimination of the WQMP Introduction and the Public Participation Program (Work Element No. 11).

CCNS requests that the Introduction to the New Mexico Statewide WQMP be updated and retained as part of the WQMP. The background information found in the Introduction is very useful for understanding the history, development, and progress of the WQMP.

CCNS objects to the elimination of the WQMP Public Participation Program (Work Element No. 11). It should be retained and re-numbered as Work Element No. 10 - Public Participation Program.

Under the federal regulations for developing water quality management plans, public participation procedures are one of the essential components of a state program under the groundwater element. 40 CFR §130.6(c)(9)(v). However, no public participation procedures are included in the proposed revisions for Ground water (Work Element No. 9). New Mexico is required

to include public participation procedures in the Statewide WQMP. The proposed changes do not include any public participation procedures.

CCNS understands that the Public Participation Program elements have been incorporated into other water planning documents. In our limited review of the documents, we have been unable to find them.

Public participation is essential in our post 9-11 world. Since 9-11, public documents have been removed from websites and reading rooms, thus limiting the public's ability to participate in decisionmaking. Just last week, industry representatives opposed proposed expanded public notification requirements for groundwater discharges before the Water Quality Control Commission. Both of these examples support the need for the WQMP Public Participation Program. As stated in Work Element 11:

What is meant by the term "public participation"? It goes beyond public relations; it encompasses education, the dispensing of information, and more importantly providing for public involvement and feedback regarding the water quality plan.

Encouraging meaningful public participation in water quality programs is an ongoing effort and part of the state's continuing planning process.

The Public Participation Program includes advisory bodies, a mailing list, newsletters, public presentations, mini-libraries, traveling exhibits, a photography contest, children's booklets, and specific activities of the League of Women Voters - all important efforts to educating and obtaining feedback about the statewide water quality plan.

As the drought continues, water issues will be discussed at all types of forums, including government meetings. The Statewide WQMP is a key water quality planning document. Information must be available and accessible to the community so that informed policy decisionmaking happens in the "sunshine."

Eliminating the WQMP Public Participation Program would violate the water quality management plan regulations. 40 CFR §130.6(c)(9)(v). A positive step would be to retain the existing WQMP Work Element No. 11 language, and in a timely manner, form an advisory board to advise the Surface Water Quality Bureau about updating the language. CCNS volunteers to serve on the advisory board.

Thank you for your consideration of CCNS's comments. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joni Arends
Waste Programs Director

Subject: Comments on the Draft WQMP

Date: Mon, 18 Mar 2002 15:38:02 -0700

From: Chris Mechels <cmechels@att.net>

Organization: Retired

To: glenn_saums@nmenv.state.nm.us

Dear Glenn,

Attached please find my comments on the WQMP. Sorry to be so late, but I was wrapping my arms around the issue a bit.

Sorry to say New Mexico's efforts, in such matters as the WQMP, to date seem lacking compared to all the other states, even Wyoming and Montana. The good news is that a "Best Practices" study could be very fruitful.

We've got to move away from "rote compliance" which is utterly useless, in both the WQMP and CPP. Compliance should be a "side effect" of doing things right, not a goal of itself. I think the EPA would agree.

I hope you find these comments of some use. Please let me know if I should drop off a signed copy.

Thanks for your help,

Chris Mechels
505-982-7144

 [NMEDoc Letter.doc](#)

Name: NMEDoc Letter.doc
Type: Microsoft Word Document (application/msword)
Encoding: base64

March 18, 2002

Mr. Glenn Saums
Surface Water Quality Bureau
New Mexico Environmental Department
Santa Fe, New Mexico

Dear Glenn,

The purpose of this letter is to present my comments on the Draft New Mexico Water Quality Management Plan (WQMP) which is up for major revision. These comments are due by March 19th.

A bit about my background may be useful to put my comments in context. I am retired from LANL (1994) where I worked on computer software and management. I led the development of the LANL Software Management Plan (1992), so I have some background in the function of bureaucracy. LANL oversight is provided by the DOE, as NMED oversight is provided by EPA. I am familiar with "rote compliance" and "malicious compliance" which LANL commonly practiced against DOE oversight.

As you may recall, my initial reaction to the WQMP, at your February 6th public briefing on the draft, was one of disbelief as the draft presented seemed totally inappropriate for its role, i.e., the top level document describing the State's Water Quality Planning. I believe that such documents should be intelligible to a member of the public on first encounter, and this draft is not. As far as I could determine, I was the only member of the audience who was new to the issue, and I was totally baffled as to how this draft could be of any use as a WQMP.

During my subsequent visit to NMED you were most generous with your time (2 hours) in explaining the background of the WQMP and how it fits into the scheme of things. I suggested at the time that all that background belongs in the WQMP. A very helpful piece of information was the "old" WQMP (1978) which is being replaced. Its content seemed much closer to what I expected in such a document, i.e., a high level overview of the State plan. Most of that content was not updated, but simply stripped out, of the new Plan.

I have since taken the time to understand the EPA Clean Water Act, the New Mexico implementation of same, its purposes and how it affects the WQMP. I have also spent extensive "web" time looking at other states implementations of the same Act. Having come to understand the territory a bit I feel well prepared to offer the following comments:

1) Looking at the other States, I would rank our efforts on the WQMP and the CPP documents dead last. Both of these documents seem focused on "rote compliance" rather than informing and involving the public. I therefore suggest that the whole revision of the WQMP needs to be rethought, with "rote compliance" minimized and informing the public emphasized.

2) I suggest that the WQMP should be revised at the same time as the CPP, as the two documents are so heavily interlocked that the new WQMP will render obsolete at least 5 pages of the CPP. This could be a good time to look at combining the two documents into one, as was done in Colorado. (www.cdphs.state.co.us/op/wqcc/cpphand.pdf) I find that handbook very useful. Rating it for its utility in explaining the State water quality plans, I would rate it about a "B", as against "D" for the old WQMP and a solid "F" for the revised Plan.

3) It seems very clear that the old WQMP was of no use, as it was not a living document. It contained mostly obsolete content matter. I have questions about the utility of the CPP. If these documents are simply "rote compliance" with the EPA, we really need to look at what we are doing as that is a total waste of time and taxpayer's money.

4) Because of questions about the purpose, if any, of the WQMP and CPP (other than rote compliance) I suggest that an examination of the whole documentation structure needs to be undertaken, including the respective roles of: WQMP; CPP; 305B Report, etc. What I have seen to date suggests massive role confusion/migration over time. How does our documentation compare with other states? It seems we could benefit from "Best Practices" in this area.

5) NMED must undertake a major upgrade of its web site, which I rank dead last among such State sites, compared to even small/poor states such as Wyoming. The web site should be, as it is in other states, the foremost tool in engaging/involving/informing the public on water quality issues.

In summary, I found this issue very difficult to engage. At best the many EPA regulations, added on over time, create a confusing picture which is difficult for the public to understand. High level documents such as the WQMP have a role in sorting out this complexity and explaining it in a coherent way. I feel that the Draft WQMP utterly fails in this task, even more so than the original WQMP. This suggests to me that NMED/SWQB has lost sight of the purpose of such documents and needs to revisit/rethink the WQMP contents.

I am at your service to explain or discuss the content of this letter. Thanks for the time spent helping me to get "up to speed" on this subject.

Sincerely,

Chris Mechels
Retired LANL (1994)
1336 Bishops Lodge Rd
Santa Fe, NM 87506
505-982-7144

Subject: State Water Quality Management Plan

Date: Fri, 1 Mar 2002 10:05:26 -0700

From: "Jay Lazarus" <lazarus@glorietageo.com>

To: "Glenn Saums" <glenn_saums@nmenv.state.nm.us>

CC: "Sharon Lombardi" <dpnm1@juno.com>

Hi Glenn

On behalf of Dairy Producers of New Mexico (DPNM) I want to thank the Surface Water Bureau for the time and energy you guys and gals put into the preparation of the State Water Quality Management Plan. I know how tiring "road shows" are and you kept the energy level going at a remarkable pace. Although we may not comment on the proposed plan (or may not agree with its entirety) we greatly appreciate the Bureau's initiative to keep us informed. The Bureau's initiative in providing electronic copies for download and the CD you provided to us is exceptionally helpful for our research. I wish

I found out the e-mail problem was that I had you in my address book as Glen with one N.

Thanks Jay

Subject: Comments on the Draft NM Water Quality Management Plan

Date: Wed, 13 Feb 2002 12:27:15 -0700

From: "Evert Oldham" <evert@cyberport.com>

To: <glenn_saums@nmenv.state.nm.us>

I unintentionally sent a draft of this e-mail out before it was complete. Please disregard the previous and accept this as the final. Sorry for the inconvenience.

Glen Saums, Natural Science Manager
New Mexico Environment Department
Surface Water Quality Bureau
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502

Dear Glenn,

First, thank you for holding a public meeting in Farmington last week. As a non-technical member of the public concerned about water quality, I greatly appreciate the tone of openness and the mechanisms of public inclusion you and your staff have established. Although this may seem burdensome to some experts in the field, it is refreshing to me that your agency has chosen to show respect for the people you serve by making the process and information physically and intellectually accessible.

You have done a good job refining the WQMP. I do not have the knowledge to speak to the technical aspects of the plan, but I do have a sense that, to the extent that it will meet the expectations of the EPA, it is a well refined document thoroughly covering the required elements without the burden of unnecessary redundancy and irrelevance.

My objection is that the plan is reactive and not proactive. I expect the limitations lie in the enabling legislation, and as such are beyond your authority. Nevertheless, I wish to take this opportunity to address a significant shortcoming in the protection of the quality of New Mexico's surface water resource.

LEGAL AND REGULATORY DISCONNECT BETWEEN WATER RIGHTS, WATER SUPPLY AND WATER QUALITY

Accepting the concept, as do most environmental scientists, that "dilution is the solution to pollution" it would seem unthinkable that these elements of water resource administration would be addressed incrementally rather than collectively. Unfortunately the unthinkable is the rule in New Mexico.

I first learned this in 1999 when I raised objections in a partial final decree hearing in the San Juan River Basin Adjudication Suit CV 75-184-1, San Juan County, New Mexico. My objection was based on the evidence before the court that showed a huge shortfall in water supply when compared to water rights. Judge Stanley Frost, former NM Supreme Court Justice, overruled my objection stating that the court had no jurisdiction to consider water supply in a water rights adjudication suit. Astounding!

The Upper Colorado River Basin Compact of 1948 allocated New Mexico a percentage of the streamflows of the Colorado River system, roughly 11.25%. At the time this was understood to represent 753,750 acre feet per year (afy.) In 1988 the Bureau of Reclamation's (BOR) Hydrologic Determination, based on actual streamflow measurements, reduced the amount to 670,000 afy. In 1990 the U.S. Fish and Wildlife Service found that further depletion of the San Juan River system would create a jeopardy for endangered species. This led to the 1999 San Juan River Basin Recovery Implementation Program's (RIP) Baseline Depletion Schedule that further reduces New Mexico's Colorado River water supply to 593,874 afy.

The Final Decree in Cause No. 1690, McDermott vs Echo, et al, 1948, adjudicated approximately 100,000 afy of water rights. Approximately 25,000 afy in additional permits were issued by the State Engineer's Office (SEO) to local cities, individuals and companies after the Echo Ditch Decree. Between 1955 to 1968 the SEO issued permits to the U.S. Department of Interior, BOR totaling 1, 553,390 afy. Unstated and unresolved claims for water rights are being addressed in CV 75-184-1 for the Navajo Nation (perhaps as much as 500,000 afy,) the Ute Mountain Utes (unstated but expected to be huge,) Federal Reserved claims: National Park Service - Aztec & Chaco (unstated but expected to be very small,) Bureau of Land Management (BLM)(1,500 claims no amount stated,) Forest Service - Santa Fe (20 claims no amount specified) and Carson (400 claims no amount specified.) Meanwhile the City of Albuquerque is discussing increasing their diversion amount through San Juan Chama from 120,000 afy to 200,000 afy, an Environmental Impact Statement is being prepared on the proposed Navajo Gallup pipeline that would divert and deplete an additional 25,000 afy and construction is scheduled to begin on the infamous Animas-La Plata Project which will divert at least 12,500 afy. This math isn't fuzzy, it's black and white. The numbers don't add up!!

Statistics show that less than 7% of the land mass of San Juan County, New Mexico is privately held and available for development. This number is misleading. When one subtracts out the area for the stream beds and flood plain of three rivers and all that occupied by streets, roads and infrastructure there may be substantially less than 5% available. Almost all this land lies in the three narrow river valleys. Most of the 120,000 residents are served by septic systems adjacent, or in close proximity, to the rivers. The rivers are the source of the community's drinking water.

Now to my point. In all these matters the New Mexico Environment Department is absent and silent. Subdivisions with homes served by septic systems are being approved by the Environment Department where the lot size meets the 3/4 acre regulation, but physically

the lot consists of a footprint just big enough to build a house with the balance of the lot area extending down a canyon wall or out into the river. In San Juan County, New Mexico we are on the verge of a public health and water quality crisis. There are no provisions in the Draft NM Water Quality Management Plan for dealing with these situations proactively. This we must change. I would be delighted to hear your thoughts and suggestions for how we might do so.

My very best regards,

Evert Oldham
43 Rd 3523
Flora Vista, NM 87415
evert@cyberport.com
505-334-3204
800-854-5715 fax

P.S. Just for the record:

I attended a San Juan Water Commission (SJWC) meeting where there was discussion about drafting a letter opposing elements of the draft WQMP. I want your agency to be informed about the authority of the SJWC so I cite from the Joint Powers Agreement 3-28-86, III. Creation of and Agreements of the San Juan Water Commission, "K. The Commission's authority shall be limited to the acquisition and holding of water rights, rights to water, storage of untreated water, and distribution of untreated water for the benefit of all the parties to this agreement and the residents of San Juan County."

I would be extremely disappointed if the SJWC's comments were given weighted consideration greater than those of any singular citizen.

Subject: RE: W. Va Case

Date: Tue, 19 Mar 2002 11:43:15 -0700

From: "Scott Cameron" <scameron@fguardians.org>

To: "Glenn Saums" <glenn_saums@nmenv.state.nm.us>

thanks for the info Glenn. Attached are our comments to the draft WQMP.
Please keep me posted on the CPP progress...

Scott C. Cameron
Clean Water Coordinator

Santa Fe Office:
312 Montezuma Suite A
Santa Fe, NM 87501
(505) 988-9126 ext. 156
(505) 989-8623 FAX

Albuquerque Office:
1220 Lobo NE
Albuquerque, NM 87106
(505) 266-1118

-----Original Message-----

From: Glenn Saums [mailto:glenn_saums@nmenv.state.nm.us]

Sent: Tuesday, March 19, 2002 10:58 AM

To: Scott Cameron

Subject: W. Va Case



[wqmp comments final.doc](#)

Name: wqmp comments final.doc

Type: Microsoft Word Document (application/msword)

Encoding: base64



Glenn Saums, Program Manager
Point Source Regulation Section
Surface Water Quality Bureau
New Mexico Environment Department

March 19, 2002

Dear Mr. Saums,

The following letter constitutes Forest Guardians' comments on the draft Water Quality Management Plan (WQMP), submitted to the public for comment on January 20, 2002.

In general, we find the WQMP draft to be inadequate due mainly to its reference to numerous other documents (the Continuing Planning Process in particular) that are currently being revised and/or are not yet approved by EPA. In referring to the CPP, the WQMP places most of its implementation measures and authority in that document, one which is being revised and is as yet unapproved by the EPA. The Clean Water Act explicitly states there must be *adequate authority and implementation in a WQMP*. §303(e)(3)(E and F), 33 U.S.C.A. §1313 (emphasis added). By deferring this implementation and authority to other documents like the CPP, NMED is not following this mandate of the CWA.

Voluntary Implementation of BMPs

The voluntary nature of BMP implementation in TMDLs, referred to in the draft WQMP, does not meet this mandate either. As we have stated in previous comments to specific proposed TMDLs:

We contend that voluntary BMP's in the draft implementation plan comply with neither the letter nor the spirit of the Clean Water Act, and will not result in the eventual re-attainment of water quality standards as envisioned by the TMDL process. We therefore urge you to include mandatory BMPs in the final TMDLs and in the CPP (and by reference the draft WQMP) in order to assure that water quality standards have a real chance to be attained.

A TMDL consists of a pollutant specific standard and a plan to meet that standard. The standard, or "target load" is the maximum amount of pollution that a river can take from all sources without violating water quality standards. Once this "target load" is established, the TMDL then mandates pollution reductions to the various sources of pollution in a watershed to meet that standard. Pollution reductions are achieved through "load allocations" which set the maximum amount of pollution each source can contribute. These load allocations are referred to as "wasteload allocations" or "WLAs" when applied to point sources and "load allocations" or "LAs" when applied to nonpoint sources. A TMDL, therefore, represents the "sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background." 40 C.F.R. § 130.2(i).

At a minimum, each plan of implementation must include "reasonable assurances" that the WLAs or LAs will, in fact, be implemented and achieved. With respect to WLAs for point sources, such assurances are easily provided by demonstrating how the load allocations will be incorporated into the permit. 40 C.F.R. §130.7(a). In each permit, effluent limitations can be adjusted to ensure that the pollution reductions succeed. With respect to nonpoint sources, providing these assurances is more difficult because there are generally no permits to adjust. Rather, the TMDLs are implemented via BMPs which are

incorporated into a state's WQMP as outlined in section 303(e) of the CWA. 33 U.S.C. § 1313(e); 40 C.F.R. § 130.7(a).

Once the "target load" and "load allocations" are established, the TMDL process gets underway. The next step is to transform the calculations in the TMDL into real, on-the-ground results--to implement the TMDL. As a last resort measure, Congress mandated that TMDLs succeed in improving water quality. TMDLs "shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge." 33 U.S.C. § 1313(d)(1)(C). EPA agrees, stating that "TMDLs shall be established at levels necessary to attain and maintain . . . water quality standards." 40 C.F.R. § 130.7(c)(1). Whether or not a TMDL will improve water quality is therefore the standard for State TMDLs. 33 U.S.C. § 1313(d)(2).

Before approving a TMDL, EPA must ensure that the load allocations will succeed in protecting and improving water quality. 33 U.S.C. §§ 1313(d)(1)(C), 1313(d)(2); 40 C.F.R. 130.7(c). If EPA decides to disapprove a TMDL, then it must "establish such loads for such waters as [it] determines necessary to implement the water quality standards." 33 U.S.C. § 1313 (d)(2).

"Reasonable assurances" are a required element of a TMDL and/or plan to implement a TMDL. Congress' intent to require reasonable assurances that TMDLs will be implemented to improve water quality is clearly reflected in the plain language of section 303 of the CWA, the legislative history of section 303 of the CWA, and the very purpose of the CWA. This is a reasonable conclusion because it ensures that the goals of the CWA are met.

In drafting the language of section 303 of the CWA, Congress consciously used the word "shall." States "shall" prepare TMDLs, "shall" establish such TMDLs at level necessary to implement water quality standards, "shall" disapprove TMDLs that fail to implement water quality standards, and "shall" have a management plan which includes TMDLs and a provision for "adequate implementation." 33 U.S.C. §§ 1313(d)(1)(C), 1313(e)(1), 1313(e)(3)(C), (F).

However the burden will fall primarily on the polluters to ensure that the BMPs are actually implemented. In NMED's own words from other TMDLs, cooperation from the polluters "will be pivotal in implementation of this TMDL." See Cordova Creek TMDL, 1999. The key word in NMED's plan is "cooperation." The polluters in that TMDL, like in all TMDLs and under the WQMPs direction, have the option of doing nothing. They can choose not to get involved-not to undertake the expensive and time consuming burden of implementing the BMPs. There are absolutely no obligations or mandates in the plan requiring polluters to implement the necessary BMPs.

By allowing section 319's voluntary program to be the sole basis for implementing the TMDL, the State is ignoring the "reasonable assurance" requirement. Unlike section 319's voluntary, consensus based approach under the CWA, TMDLs must "implement applicable water quality standards." 33 U.S.C. § 1313(d)(1)(C). Thus, unlike section 319 plans, TMDLs must provide assurances that pollution reductions will occur and that water quality will be improved. See 33 U.S.C. § 1313(d)(1)(C). The "purely voluntary" plan to implement a TMDL plainly fails to provide such assurances. As such, there clearly are no assurances that a TMDL will be implemented to improve water quality.

The evidence suggesting that "purely voluntary" plans generally do not work is overwhelming. The failure of sections 208 and 319 of the CWA, two voluntary programs to control nonpoint source pollution, provides a good illustration. Unlike the CWA's point source program, which includes mandatory effluent limitations outlined in federally issued permits, the nonpoint source programs of section 208 and 319 of the CWA are void of any meaningful federal mandates. Both programs are "purely voluntary." They rely on voluntary state planning and implementation, technical assistance, and ineffective financial incentives, rather than mandatory controls, to abate nonpoint source pollution. See 33 U.S.C. §§ 1288(b)(2)(F), 1288(j), 1329(h). The result is predictable.

Today, while point source pollution is at a twenty year low, nonpoint source pollution is out of control. In EPA's own words, nonpoint source pollution remains the Nation's largest source of water

quality problems. It's the main reason that approximately 40 percent of surveyed rivers, lakes, and estuaries are not clean enough to meet basic uses such as fishing or swimming. The current nonpoint source pollution problem can be attributed to one factor: State reliance on voluntary compliance.

Under the voluntary schemes of sections 208 and 319 of the CWA, states are opting not to implement nonpoint source controls. States are reluctant to require controls because, as one observer noted, "the expense to states, both in terms of money and the political costs of imposing burdensome regulations on powerful agricultural interests, is potentially significant." See Houck, *supra* footnote 10 at 527. Without a "meaningful federal mandate, the states, with a few . . . exceptions have not implemented polluted runoff programs of their own." *Id.*

Even though EPA is well-aware of this fact, the "protection" Agency is allowing states to use the voluntary, incentive-based program under section 319 of the CWA, without any upgrades, to implement TMDLs. Once again, the results are predictable. A 1998 study of 55 TMDLs approved by EPA, many with voluntary implementation plans, showed a "near-total avoidance of implementation measures." Oliver A. Houck TMDLs IV: The Final Frontier, 29 ELR 10469, 10481 (August, 1999). Today, EPA is aware of hundreds of "purely voluntary" TMDLs that are not being implemented.

Indeed, it was the "purely voluntary" nature of the 1965 Water Quality Act that led to the 1972 amendments and the birth of the TMDL program. See H.R. 11896 at 68, 69, 106, 107, 92nd Cong. (1972); S. Rep. No. 92-414, at 3675 (1972). Similar congressional concerns over the futility of voluntary measures prompted the 1935 amendments to the Federal Power Act, 16 U.S.C. §§ 797-817, the 1977 and 1990 amendments to the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and the 1990 amendments to the Coastal Zone Management Act, 16 U.S.C. §§ 1451 to 1465 ("CZMA").

As one court noted, the 1935 amendment to the Federal Power Act, "made licensing a mandatory requirement" for all new projects. Cooley v. F.E.R.C., 843 F.2d 1464 (D.C. Cir. 1988) (citing S. Rep. No. 621, 74th Cong., 1st Sess. (1935) and First Iowa Hydro- Electric Coop. v. FPC, 328 U.S. 152 (1946)). The earlier, purely voluntary scheme "had proven inadequate for the development of a comprehensive system of water power regulation." *Id.*

In the 1977 amendments to the CAA, Congress again recognized the ineffectiveness of voluntary compliance. As the Sixth Circuit noted, "although some voluntary compliance and cooperation was achieved under the former version of the [CAA], Congress clearly found the earlier provisions an inadequate answer to the problem of interstate air pollution. Air Pollution Control Dist. of Jefferson County, Ky. v. U.S.E.P.A., 739 F.2d 1071, 1091 (6th Cir. 1984) (citing H. R. Rep. No. 294, 95th Cong., 1st Sess. 329). The new mandatory CAA provisions, "were intended to establish an effective mechanism for prevention, control, and abatement of interstate air pollution." *Id.* at 1091. In 1990, Congress amended the CAA once again, this time replacing a failing "discretionary" state permitting program with a mandatory federally enforceable permitting scheme. See 42 U.S.C. §§ 7661-7661d.

In addition, in 1990 Congress passed the "Coastal Zone Reauthorization Amendments of 1990" (CZARA), amending the 1972 CZMA, because the earlier program of providing federal grant money for "voluntary" state programs was failing to protect coastal resources from nonpoint source pollution. Under the new approach, participating states are now required to prepare and submit to EPA for approval, a program to protect coastal waters from nonpoint source pollution. 16 U.S.C. § 1455b(a)(1). Before any federal money is dispersed, each state program must, at a minimum, include "enforceable policies and mechanisms to implement" the program. 16 U.S.C. § 1455(d)(16). CZMA defines "enforceable policy" to mean "State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources." 16 U.S.C. § 1453(6a). The existence of an "enforceable policy" provides the requisite assurance that plans will, in fact, be implemented and pollution reductions achieved.

In amending all of these environmental statutes Congress repeatedly and consistently has recognized the futility of "purely voluntary" programs in achieving Congressional goals. Today, a number

of states are following Congress' lead by recognizing the need for enforceable policies and abandoning the voluntary approach towards controlling nonpoint source pollution. In Idaho, for instance, the state's water pollution control law imposes an affirmative duty on nonpoint source polluters to implement BMPs in order to meet and implement water quality standards for all waters with TMDLs. See Idaho Code § 39-3618. Failure to implement BMPs in such waters, may result in a civil action from the state agency. See Idaho Code § 39-3622. The enforceable program is working. The TMDLs for Idaho's South Fork of the Salmon River provide a good illustration. These TMDLs, which include mandatory BMPs to minimize sediment inputs from forestry operations (e.g., slope stabilization projects, grass seeding) are succeeding in returning a highly valued Chinook salmon and steelhead population to the once polluted River.

In Maryland, the State's Department of the Environment has the authority to require enforceable permits for certain nonpoint source discharges. See Md. Code. Ann., Envir. § 9- 323(b). In addition, all soil and sediment pollution is prohibited, except for agricultural activities conducted in accordance with soil conservation and water quality plans. See Md. Code. Ann., Envir. § 9-322. A violation of these provisions may result in corrective action orders, injunctions, civil penalties, and even criminal prosecution. See Md. Code. Ann., Envir. §§ 9-334, 9-335, 9- 338, 9-342, 9-343. Other states such as California, Oregon, Georgia, Vermont, and Wisconsin have adopted similar, enforceable approaches towards remedying nonpoint source pollution problems.

As described above, there is an overwhelming amount of evidence suggesting that "purely voluntary" measures are generally ineffective and unreliable. As such, a purely voluntary plan of implementation clearly does not belong in a TMDL, or in the WQMP. As a last resort measure there must be "reasonable assurances" that all TMDLs will be implemented to improve water quality and, voluntary plans, by themselves, fail to provide such assurances. In fact, NMED even concedes in other TMDLs that even with implementation of numerous BMPs, the waterway at issue may not be able to meet water quality standards.

Therefore, this purely voluntary approach does not belong in TMDLs or the draft WQMP because, unlike other clean up programs under the CWA, a TMDL and the WQMP both come with a mandate—there must be "reasonable assurances" that they will be implemented properly to improve water quality. We urge the State to adopt measures similar to the ones outlined above and adopted by other States that are effective. We also urge NMED to pressure the Water Quality Control Commission to “promulgate and publish regulations to prevent or abate water pollution in the state” as authorized by New Mexico’s Water Quality Act. This authority is listed as an “Assurance” in TMDLs, and we feel is much more likely to reasonably assure that TMDLs actually lead to the attainment of WQS.

WQMP Implementation

The WQMP should serve as the implementation plan for a TMDL, consisting of specified action items. In combining the roles of the TMDL and the WQMP in its guidance, the Department not only undervalues the quantitative analysis of necessary solutions in the TMDL but also degrades the value of a WQMP as an implementation plan. In essence, the WQMP masquerades as an action plan but never goes beyond goals, objectives, and suggestions, and vague statements concerning adaptive management.

The greatest problem with the WQMP lies in its utter failure to provide any sort of plan for action. The WQMP essentially consists of a reiteration of TMDLs and vague and toothless recommendations with no real hope of implementation.

A legitimate WQMP should contain 1) complete and thorough analysis of the areas covered, not just brief synopses of the information; 2) results of the additional studies done; and 3) concrete, tangible plans with schedules of implementation, summaries of the specific means to accomplish goals, and identification of anticipated outcomes and the individuals responsible for the plan’s implementation.

Intergovernmental Coordination

The WQMP must be backed with the authority of implementation. The WQMP should establish more clearly what regulatory mechanisms will be used to ensure that appropriate control actions are taken, and must include “adequate authority for intergovernmental cooperation.” §303(e)(3)(E), 33 U.S.C.A. §1313. The “reasonable assurances” sections of the TMDL and WQMP are inadequate to demonstrate that implementation will be achieved. A more meaningful appraisal of how “reasonable” these “assurances” are would have been to discuss the track records of the parties affected by TMDLs in implementing and enforcing the laws and rules which are already in effect and which the TMDL/WQMP relies upon to achieve water quality. For example, how effective have they been in protecting water quality in the state? What does NMED’s monitoring data show, and what has NMED done in response to monitoring data which shows that private land logging, grazing, mining, and agricultural diversions and runoff has adversely affected water quality? The same types of analysis should have been done for the USFS, NMDOT, and the BLM. In addition, meaningful information about voluntary measures, such as how many landowners have participated in voluntary programs in the past, how many are currently participating, and what are the estimates (and incentives) for future involvement in voluntary programs should be discussed in the WQMP. Without analyzing and discussing this type of information, the reasonable assurances of implementation are just words on a piece of paper, with no way to determine their real world applicability.

Passing off implementation responsibility to municipalities and various other state and federal agencies potentially strips the NMED of its necessary authority to enforce water quality standards and to implement the WQMP itself, and therefore does not comply with the CWA.

Lack of Basin Plans

The WQMP also looks exclusively at water quality on a statewide basis rather than a basin-wide basis, which we assume to mean a watershed-wide basis. Again, this is accomplished through reference to the unapproved CPP, which we assume will continue to use this statewide approach. The authors of this document surely know that a watershed basin is an integrated ecosystem, and that factors beyond the riparian areas play a strong role in the degradation of a water body. By relying on a statewide basis to determine water quality impacts, the Department is ignoring this interplay between activities, ecosystems, and wildlife that a watershed-basis or basin-basis approach could provide.

Furthermore, by not fully addressing all of the factors contributing to the degradation in water quality within the entire watershed, the NMED will be giving landowners and management and regulatory agencies leeway to continue the status quo which has resulted in the need for TMDLs and a WQMP in the first place. The WQMP will never be complete until all waters are analyzed on a watershed basis (including the upper half of the watershed) and not just an independent stream, affected only by its lone riparian zone, or as a over-broad state wide system.

Beyond the fact that the WQMP fails to fully consider the contributions of federal land use practices on the watershed, it also provides NO means of implementation or enforcement, for either public or private entities. Again, the Clean Water Act explicitly states there must be adequate authority and Implementation. The WQMP should establish the roles of participating agencies to ensure sufficient non-point source controls to meet the requirements of the TMDL as well as spell out the details that are necessary. A mandatory monitoring and reporting system done by the Forest Service or BLM should be established so that the NMED remains informed about the effects of agency practices on affected waterways. Finally, regulatory means through which enforcement will be achieved as to private landowners must also be indicated.

ESA Consultation and Take Prohibitions

The WQMP must include implementation procedures for consultation with the US Fish And Wildlife Service to comply with the Endangered Species Act, both for it’s own adoption and for the 8 work elements contained within it. Section 7 of the Endangered Species Act (ESA) requires that federal agencies

consult with the USFWS on any agency action which is likely to jeopardize the species or result in adverse modification of critical habitat for each species. §7, 16 U.S.C.A. §1536(a)(4). In this case, because the WQMP will have a great effect on the habitat for many endangered and threatened aquatic species, consultation with FWS is both appropriate and necessary. Furthermore, the roles of United States Forest Service (USFS), the Bureau of Land Management, and the Environmental Protection Agency (EPA) make the development and implementation of the WQMP a federal action, especially since the EPA must ultimately approve it

Review by the EPA, and its role in preparing the WQMP, is a federal action. The Clean Water Act stipulates that once a state has developed a WQMP, it must submit it to the EPA for approval. §303(e)(2), 33 U.S.C.A. §1313 Even though the EPA does not have the responsibility of developing its own WQMP if it finds the states inadequate, the process of reviewing and approving the state's WQMP clearly falls under the ESA's definition of federal action. §7, 16 U.S.C.A. §1536(a)(2). Therefore, before approving or disapproving the WQMP, the EPA must submit them to NMFS for consultation.

In a similar fashion, the WQMP must contain provisions in its implementation procedures which ensure that no species or their habitat is "take[n]", in violation of §9 of the ESA. This could (and should) take the form of plans under §7(a)(1) included in the WQMP that the state is going to implement to ensure that actions authorized by the WQMP do not take species or their habitat.

Conclusion

We are glad to see that NMED is finally attending to the fact that the WQMP is outdated and in need of revision, and hopefully this will result in some assistance in improving water quality in the state. However, we feel that the WQMP could be a much more useful and protective document if the changes outlined above are made to it before final submittal to EPA. Revision of the Q+WQMP is an excellent opportunity for NMED to be proactive and preventative when it comes to water quality, and take the lead in ensuring that waters are actually improved. As written, we feel that the WQMP only meets the bare minimum required by the CWA, and should be improved so that it not only complies with the CWA, but so that it takes the Act's goal of improvement of water quality more seriously. Thank you for the opportunity to comment on the WQMP.

Sincerely,

/s/ SC Cameron

Scott C. Cameron
Clean Water Coordinator
Forest Guardians
Santa Fe, NM

Los Alamos

NATIONAL LABORATORY

*Los Alamos National Laboratory
Los Alamos, New Mexico 87545*

Date: March 18, 2002

In Reply Refer To: ESH-18/WQ&H:02-112

Mail Stop: K497

Telephone: (505) 665-6085

Dr. James Davis
Surface Water Quality Bureau Chief
New Mexico Environment Department
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

RECEIVED

MAR 21 2002

SURFACE WATER
QUALITY BUREAU

**SUBJECT: LOS ALAMOS NATIONAL LABORATORY COMMENTS ON STATE OF
NEW MEXICO STATEWIDE WATER QUALITY MANAGEMENT PLAN**

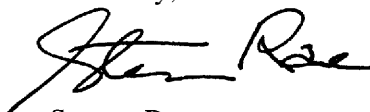
Dear Dr. Davis:

The Laboratory's Water Quality and Hydrology Group (ESH-18) is pleased to comment on the "State of New Mexico Statewide Water Quality Management Plan, December 20, 2001". The Laboratory appreciates having the opportunity to attend the public meeting held in Santa Fe on February 6, 2002 and hear the very informative presentation on the plan by Mr. Glenn Saums.

Enclosure 1 contains the Laboratory's general and specific comments on the draft plan. The Laboratory would like to complement the Surface Water Quality Bureau, and particularly Mr. Glenn Saums, on the new format of the *State of New Mexico Statewide Water Quality Management Plan*. The format, wherein many documents are incorporated by reference and electronically linked, is very helpful. This innovative approach is likely to serve as a model for other states. The Laboratory strongly supports this approach for this document and other policy documents (e.g. Continuing Planning Process, Nonpoint Source Management Program) as they are updated.

If you have any questions regarding the enclosed comments, please call Mike Saladen at (505) 665-6085 (saladen_michael_t@lanl.gov).

Sincerely,



Steven Rae
Water Quality and Hydrology Group

SR:MS/am

Enclosures: a/s

Cy: J. Vozella, DOE/OLASO, w/o enc., MS A316
G. Turner, DOE/OLASO, w/enc., MS A316
K. Agogino, DOE/AL, Albuquerque, New Mexico, w/o enc.
B. Ramsey, FWO-DO, w/o enc., MS K492
L. McAtee, ESH-DO, w/o enc., MS K491
P. Thullen, ESH-DO, w/o enc., MS K491
D. Stavert, ESH-DO, w/o enc., MS K491
C. Nylander, ESH-18, w/enc., MS K497
M. Saladen, ESH-18, w/enc., MS K497
WQ&H File, w/enc., MS K497
IM-5, w/enc., MS A150

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated
December 20, 2001

General Comments

- 1) The new format of the *State of New Mexico Statewide Water Quality Management Plan*, wherein many documents are incorporated by reference and electronically linked, is excellent. This innovative approach is highly commendable and is likely to serve as a model for other states. The Laboratory strongly supports this approach for this document and other policy documents (e.g. Continuing Planning Process, Nonpoint Source Management Program) as they are updated.
- 2) The Laboratory urges the New Mexico Environment Department and the Water Quality Control Commission to archive records with the State Records Center so that there is public access to the records. These records provide the history and evolution of water quality regulation in New Mexico. The records include predecessor policy and management documents, Water Quality Control Commission meeting minutes, transcripts from Triennial Reviews, and Water Quality Control Commission statements of reason.
- 3) The Laboratory understands that "The State of New Mexico has elected to utilize its Clean Water Act *Continuing Planning Process* as an "umbrella" planning document to describe implementation measures employed by the State to protect water quality and to carry out the plan." (*State of New Mexico Statewide Water Quality Management Plan*, p. 32). This objective was corroborated by testimony given by Glenn Saums at the March 13-14 2002 WQCC hearing on the *New Mexico Environment Department Surface water Quality Bureau's petition to amend Sections 20.6.4.10, 20.6.4.11, 20.6.4.12, 20.6.4.113, and 20.6.4.900 NMAC of the Commission's Standards for Interstate and Intrastate Surface Waters*. In his testimony, Mr. Saums indicated that the *State of New Mexico Statewide Water Quality Management Plan* was the more appropriate document for formulae and other detailed information because the *Continuing Planning Process* is a more general "umbrella" document.

As the Laboratory stated in testimony at the March 13-14 hearing, the Laboratory believes that the *Continuing Planning Process* should be the comprehensive detailed description of the implementation measures employed by the State to protect water quality. Table 1 compares the requirements in 40 CFR 130 for the Water Quality Management Plan (40 CFR 130.5) and for the Continuing Planning Process (40 CFR 130.6). The Water Quality Management Plan is intended, by regulation, "to draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan." (40 CFR 130.5(b)). The nine required elements of the Water Quality Management Plan call for descriptions of programs

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated
December 20, 2001

and measures. The annual work plan of the State should be based on priorities described in the Water Quality Management Plan.

On the other hand, the purpose of the CPP, by regulation, lays out how the State who is "responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP." (40 CFR 130.6(a)). Each of the required nine elements of the continuing planning process begin with "The process for..." (Table 1). By regulation, it appears that the Water Quality Management Plan is intended to be, "**What** we are doing" and the Continuing Planning Process is intended to be "**How** we will do it". Thus, the Laboratory believes that the Continuing Planning Process should be the comprehensive compendium of the processes used by the State of New Mexico to protect and restore water quality.

- 4) The Laboratory commends the public outreach for the *State of New Mexico Statewide Water Quality Management Plan*. Laboratory representatives attended the meeting held in Santa Fe on February 6, 2002. The presentation was very informative and the NMED representatives answered questions professionally.
- 5) As stated above, the Water Quality Management Plan is intended "to draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures.....". This plan does not identify priority water quality problems or issues. Each element should include a description of the issues and how the proposed activities will address those issues.

Specific Comments

- 1) Introduction, page 6
The draft the *State of New Mexico Statewide Water Quality Management Plan* reflects the deletion of 5 work elements previously retired by the Water Quality Control Commission and 16 work elements that are proposed for deletion. These 16 work elements proposed for deletion are activities that have been completed, some are outdated descriptions of work elements that are still ongoing, and some have been incorporated into other work elements. It would be very helpful if the introduction to this document contained a matrix that indicates the disposition of all the work elements in the existing Water Quality Management Plan. This would allay concerns that some activities have been cut out and will not be done. For those work elements that are proposed for deletion simply because the descriptions of activities are out dated (we don't do them that way any more), but that are still ongoing, there should be an indication of when updated descriptions will be added back into the Water Quality Management Plan or the Continuing Planning Process, as appropriate.

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated
December 20, 2001

2) Work Element 1, Page 7 - 15

The list of TMDLs that have been adopted by the Water Quality Control Commission has repetitive information that constitutes approximately 25% of the document. This information could be adequately presented in a table that would not occupy as much space in the document.

3) Work Element 1, Page 15

This work element should include a description of the prioritized TMDL activities and issues that will be the focus of the coming years work as required in 40 CFR 130.6(b). Although the strategy refers to the schedule in the consent decree for TMDLs, there is also mention of negotiated grant commitments and the option for the State to work on any TMDL that it may find necessary and appropriate. The negotiated grant commitments should be either be listed in this document or a link the to list be provided. The criteria that would determine a necessary or appropriate TMDL should either be listed or incorporated by reference.

4) Work Element 1, Pages 17 - 19

Tables 1-1, 1-2, and 1-3 are point source load allocations that were established by TMDLs prior to 1999. If these load allocations have been incorporated into the NPDES permits for these sources, it seems that the information in these tables should be in Work Element 2, Effluent Limitations.

5) Work Element 2, Page 20

A list of all NPDES permits, with the location of discharge and status should be provided in this plan or hyperlinked to this plan. Such a list is available on the NMED web site at: <http://www.nmenv.state.nm.us/swqb/psrlist.html>.

6) Work Element 2, Page 22

Elements 2, 3, and 4 of the strategy are EPA responsibilities, and it is not clear why they are part of the strategy for New Mexico. These strategic elements should be reworded to indicate what the State's role in these elements is.

7) Work Element 2, Page 22

This work element should include a description of the prioritized NPDES activities and issues that will be the focus of the coming years work as required in 40 CFR 130.6(b).

8) Work Element 3, Page 24

The referenced documents in this section should hyperlinked as are most other documents incorporated by reference. These documents do not seem to be available on the New Mexico Environment Department Surface Water Quality Bureau web site.

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated
December 20, 2001

- 9) Work Element 3, Page 24
This work element should include a description of the prioritized waste treatment activities and issues that will be the focus of the coming years work as required in 40 CFR 130.6(b).
- 10) Work Element 4, Page 26
This work element description should be expanded to include the use of Best Management Practices controlling for nonpoint source pollution and the use of voluntary programs for controlling nonpoint source pollution in New Mexico. It should also describe the funding for nonpoint source pollution control activities. Such an expanded description should be comparable to the description in Work Elements 1 and 2, a concise broad overview of the program.
- 11) Work Element 4, Page 26
This work element should include a schedule for the revision of the Nonpoint Source Management Program. It should also include the prioritized nonpoint source management activities and issues that will be the focus of the coming years work as required in 40 CFR 130.6(b).
- 12) Work Element 5, Pages 29 - 30
The caption for the tabular information provided on pages 29-30 says that the listed are "Designated Management Agencies for Wastewater Management". There are four that are noted as "rejected". Presumably, if the petitions of these four were rejected, they are not "designated management agencies for wastewater management" and should not be included in the list at all. Then, there would be no need to have the "Accepted/Rejected" columns on the table and the information could be consolidated. Another option would be to add some other information to the table, such as the date of petition acceptance, so that an interested party to go to the WQCC minutes and read about any concerns or issues that might have been raised.
- 13) Work Element 6, Page 32
The "Background" section of this work element points out the importance of having a schedule for implementing water pollution control activities and describes three important constraints for developing such a schedule. This section should include such a schedule or reference to where a schedule exists.
- 14) Work Element 6, Page 33
This work element alludes to various funding programs for water pollution control activities. This section should explicitly specify the funding programs that are used for the water pollution control activities described in all the work elements in this plan. This is particularly important because the Continuing Planning Process document referenced in the "Strategy" section of this work element also does not contain an overall schedule of water pollution activities.

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated
December 20, 2001

15) Work Element 9, page 37

The discussion of the database from line 27 to line 41 seems out of place within the context of this work element. A concise overview of the comprehensive regulations that shows they are "a process to control the disposal of pollutants on land or in subsurface excavations..." would be more consistent with the rest of the document and more useful to the reader.

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated December 20, 2001

Table 1: Comparison of Regulatory Requirements for Water Quality Management Plans and the Continuing Planning Process under 40 CFR 130.	
§ 130.6 Water quality management plans.	§ 130.5 Continuing planning process.
General Description	General Description
WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. <i>State annual work programs shall be based upon the priority issues identified in the State WQM plan.</i> (emphasis added)	Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A) -- (H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.
Required Elements:	Required Elements:
(1) <i>Total maximum daily loads.</i> TMDLs in accordance with sections 303(d) and (e)(3)(C) of the Act and § 130.7 of this part.	(1) The <i>process for developing effluent limitations and schedules of compliance</i> at least as stringent as those required by sections 301(b) (1) and (2), 306 and 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.
(2) <i>Effluent limitations.</i> Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.5 of this part.	(2) The <i>process for incorporating elements of any applicable areawide waste treatment plans</i> under section 208, and applicable basin plans under section 209 of the Act.
(3) <i>Municipal and industrial waste treatment.</i> Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary	(3) The <i>process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations</i> for pollutants in accordance with section 303(d) of the Act and § 130.7(a) of this regulation.

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated December 20, 2001

Table 1: Comparison of Regulatory Requirements for Water Quality Management Plans and the Continuing Planning Process under 40 CFR 130.	
§ 130.6 Water quality management plans.	§ 130.5 Continuing planning process.
financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.	
<p>(4) <i>Nonpoint source management and control.</i> (i) The plan shall <i>describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution</i> where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.</p> <p>(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.</p> <p>(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)-(K) of the Act and other nonpoint sources as follows:</p> <p>(A) <i>Residual waste.</i> Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.</p> <p>(B) <i>Land disposal.</i> Identification of a process to control the</p>	<p>(4) The <i>process for updating and maintaining Water Quality Management (WQM) plans</i>, including schedules for revision.</p>

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated December 20, 2001

Table 1: Comparison of Regulatory Requirements for Water Quality Management Plans and the Continuing Planning Process under 40 CFR 130.	
§ 130.6 Water quality management plans.	§ 130.5 Continuing planning process.
<p>disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.</p> <p>(C) <i>Agricultural and silvicultural</i>. Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.</p> <p>(D) <i>Mines</i>. Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.</p> <p>(E) <i>Construction</i>. Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.</p> <p>(F) <i>Saltwater intrusion</i>. Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(I) of the Act.</p> <p>(G) <i>Urban stormwater</i>. Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.</p> <p>(iv) The nonpoint source plan elements outlined in § 130.6(c) (4)(iii)(A)(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.</p>	
(5) <i>Management agencies</i> . Identification of agencies necessary	(5) The <i>process for assuring adequate authority for</i>

Enclosure 1
 Los Alamos National Laboratory Comments on
 Draft State of New Mexico Statewide Water Quality Management Plan, dated December 20, 2001

Table 1: Comparison of Regulatory Requirements for Water Quality Management Plans and the Continuing Planning Process under 40 CFR 130.	
§ 130.6 Water quality management plans.	§ 130.5 Continuing planning process.
to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act.	<i>intergovernmental cooperation</i> in the implementation of the State WQM program.
(6) <i>Implementation measures.</i> Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).	(6) The <i>process for establishing and assuring adequate implementation of new or revised water quality standards</i> , including schedules of compliance, under section 303(c) of the Act.
7) <i>Dredge or fill program.</i> Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.	(7) The <i>process for assuring adequate controls over the disposition of all residual waste</i> from any water treatment processing.
(8) <i>Basin plans.</i> Identification of any relationship to applicable basin plans developed under section 209 of the Act.	(8) The <i>process for developing an inventory and ranking</i> , in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.
9) <i>Ground water.</i> Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to	(9) The <i>process for determining the priority of permit issuance.</i>

Enclosure 1
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan, dated December 20, 2001

Table 1: Comparison of Regulatory Requirements for Water Quality Management Plans and the Continuing Planning Process under 40 CFR 130.	
§ 130.6 Water quality management plans.	§ 130.5 Continuing planning process.
<p>develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:</p> <ul style="list-style-type: none"> (i) Overall goals, policies and legislative authorities for protection of ground-water. (ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act. (iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes. (iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies. (v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management. 	

San Juan Coal Company
La Plata Mine

RECEIVED

FEB 14 2002

SURFACE WATER
QUALITY BUREAU



BHP Billiton
Hwy 170 - 17 Miles North of Farmington
La Plata, New Mexico 87418 USA
P. O. Box 210
La Plata, New Mexico 87418 USA
Tel + 1 505 598 2800 Fax + 1 505 598 2899
bhpbilliton.com

12 February 2002

New Mexico Environment Department
Surface Water Quality Bureau/Attn: Glenn Saums
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

RE: Comment on Proposed Revisions to the State Water Quality Plan

Dear Mr. Saums:

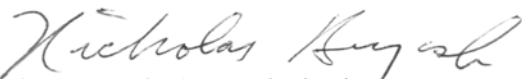
- 1) We thank the Surface Water Quality Bureau for holding the 7 February 2002 public meeting about proposed revisions to the state Water Quality Plan in Farmington. We appreciated the opportunity to meet with Bureau staff and comment on the proposed revisions as stated at the meeting and reiterated here. People in the Four Corners area are very interested in maintaining our high quality environment and working with our public agencies to ensure that they work most efficiently to that end.
- 2) We like the move toward the electronic format. We believe this will speed public access to records, and among bureaus and agencies. It also will reduce the burden of archiving volumes of paper documents.
- 3) We support the approach that the Environmental Department is taking to simplifying the State Water Quality Plan by paring it down to its essential elements. The department's intent to number the plan components similar to their corresponding federal regulatory citation is good and should help those working with the plan components.
- 4) We strongly disagree with the inconsistent approach proposed for the TMDL element, that we understand has been pushed by the EPA. The planning document is not the place for a library of every TMDL document developed in the state.

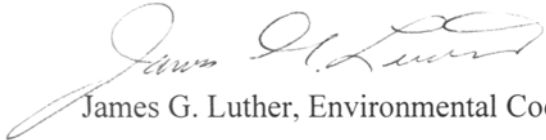
As stated above, we support the approach the Environmental Department has taken with the other elements, i.e., a summary of how the element fits into the plan and hot links to additional information. That approach will work equally well with the TMDL elements. The Water Quality Plan can include a hot link to the TMDL program library. We believe that recreating that library in the Water Quality Plan is inefficient and redundant use of our state staff. The EPA's proposed approach is also inconsistent with the Federal Paperwork Reduction Act because it not only forces a duplication of effort, but creates duplicate "electronic paper" that occupies valuable computer space.

A member of the BHP Billiton group
which is headquartered in Australia
Registered Office: 600 Bourke Street
Melbourne Victoria 3000 Australia
ABN 49 004 028 077
Registered in Australia

Thank you again for the opportunity to meet and to comment on the proposed revisions to the State Water Quality Management Plan.

Sincerely,


Nicholas Bugosh, Sr. Hydrologist


James G. Luther, Environmental Coordinator

C: Gary Lansdale, Safety and Operations Manager

San Juan Water Commission

800 MUNICIPAL DRIVE • FARMINGTON • NEW MEXICO • 87401 • 505-599-1462 • FAX 505-599-1463

MEMBERS:
City of Aztec
City of Bloomfield
City of Farmington
San Juan County
S.J. County Rural Water Users Assoc.

February 26, 2002

RECEIVED

FEB 28 2002

SURFACE WATER
QUALITY BUREAU

Glenn Saums
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

Re: Comments of San Juan Water Commission on Draft Revisions to Statewide Water Quality Management Plan

Dear Mr. Saums:

Pursuant to the public notice of a 60-day comment period for proposed revisions to the Statewide Water Quality Management Plan ("WQMP"), I hereby submit the following comments to the New Mexico Environment Department ("NMED") on behalf of the San Juan Water Commission (the "SJWC").

At the outset, let me state that the SJWC is highly supportive of the State's efforts to protect and improve the quality of ground and surface water throughout the State. In addition, the SJWC commends NMED for its excellent work not only on the WQMP, but also on the individual documents/strategies incorporated into the WQMP, such as the Nonpoint Source Management Program ("NSMP").

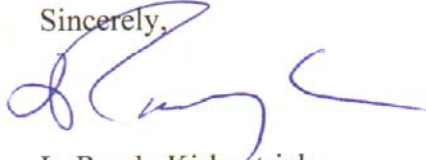
With regard to the WQMP itself, the SJWC supports each of the specific work elements proposed by NMED, except for "Work Element 8—Basin Plans." The SJWC would like to go on record as encouraging both NMED and, ultimately, the Water Quality Control Commission, to manage water quality in the State on a watershed basis rather than on a statewide basis.¹ The SJWC believes that appropriate water quality management and planning cannot occur without consideration of both local water quality conditions and local economic and social issues. Further, the State already recognizes the efficacy of managing various water quality issues on a

¹ The SJWC recognizes that the issue of statewide (vs. watershed) water quality management is not fully addressed in the WQMP. Indeed, this issue is addressed in many of the documents/plans that are incorporated by reference into the WQMP, such as the Continuing Planning Process ("CPP"). The SJWC plans to fully comment on this matter in the future when such documents are themselves subjected to public review and comment (page 6 of the WQMP states that "[d]ocuments incorporated by reference may later be revised, after public notice and participation appropriate to each document").

watershed basis. For example, the Surface Water Quality Bureau currently monitors the State's watersheds on a five-year cycle, the NSMP implements (at viii, ix, 12) nonpoint source pollution abatement and restoration programs on a watershed basis, and the Total Maximum Daily Load process is performed on a watershed basis (WQMP at 7). The SJWC therefore urges the State to return to its earlier policy of managing water quality on a watershed basis.²

Thank you for your consideration.

Sincerely,



L. Randy Kirkpatrick
Executive Director
San Juan Water Commission

cc: Water Quality Control Commission

² The CPP indicates (at 6) that, since the 1980s, "New Mexico has chosen to do its water quality management planning on a statewide basis and therefore has no areawide water quality management plans or basin water quality management plans."